

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**MERIX PHARMACEUTICAL
CORPORATION,**

Plaintiff,

v.

**EMS ACQUISITION CORPORATION,
Defendant.**

)
)
) **No. 09 C 5871**
)
) **Judge David H. Coar**
)
) **Magistrate Judge Young B. Kim**
)
)
)

**REPLY IN SUPPORT OF PLAINTIFF'S
MOTION FOR SANCTIONS**

Plaintiff, Merix Pharmaceutical Corporation ("Merix"), through its undersigned counsel, hereby files its *Reply In Support Of Motion For Sanctions*, and would further show as follows:

In its Brief in Opposition (filed under seal), Defendant fails to focus upon the matter at issue, and instead goes off on tangents while failing to address the pending motion. There is no need for Plaintiff to individually address those tangential matters not at issue in this Motion (some of which were resolved by this Court *against* the positions now asserted by Defendant). However, Plaintiff totally disagrees with Defendant's multiple assorted mischaracterizations of past discovery activities and respectfully points out that Defendant *has* been dilatory in its discovery efforts, noting that Defendant had ample time to move to compel much earlier than August 11th if it believed Plaintiff was obstructing legitimate discovery sought *last February*. Plaintiff notes that, of the 59 separate requests upon which Defendant finally moved to compel, over two-thirds (40) were *denied entirely* by this Court and, of the remaining 19 - most did not require further production but were just ordered to have the "qualifying" language revised so as to not give rise to questions regarding completeness of production. Further, Defendant has only taken one single deposition in the entire year that this case has been pending.

The true and simple *one issue* before the Court on this instant motion is not a total historical review of all past activities (which are *not* at issue before the Court), but rather the recent inconsiderate last-minute filing of two separate 15-page oppositions just hours before the scheduled hearing thereon (while Plaintiff's counsel was already travelling to the hearing), and the resulting hardship that said tactics imposed upon Plaintiff by way of its attorney's time, expenses and fees in travelling to and from that postponed hearing. Defendant gave no excuse whatsoever for its last-minute-filing tactics which would justify forcing Plaintiff to incur those expenses instead of awarding them as sanctions against the party causing them to be incurred.

WHEREFORE, since Defendant wholly failed to address or oppose the simple matter at issue in this pending Motion, and Plaintiff having presented good cause therefor, Plaintiff respectfully requests that it be awarded, as sanctions against Defendant's counsel, Ronald Williams, a total of \$2,700 for its attorney's four-and-one-half hours of wasted time and unnecessary inconvenience caused by Defendant's referenced tactics.

Dated: September 15, 2010

Respectfully submitted,

MERIX PHARMACEUTICAL CORPORATION

By: /s/ Richard Kirk Cannon

Richard Kirk Cannon
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Attorney for Plaintiff Merix Pharmaceutical Corporation

CERTIFICATE OF SERVICE

I, Richard Kirk Cannon, caused to be served a copy of the foregoing:

REPLY IN SUPPORT OF PALINTIFF'S MOTION FOR SANCTIONS

by filing same with the Clerk of the Court using the CM/ECF system which will send electronic notification of such filing to the following counsel of record:

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/s/ Richard Kirk Cannon
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